IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No.

RICHARD HARRIS,

Petitioner,

v.

UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

RICHARD HARRIS,
Pro se,
Cathcart Road,
Gwynedd Valley, Pa.

INDEX

Subject Index

	Page
Opinion Below	1
Questions Presented	2
Statement of the Case	4
Reasons for Granting the Writ	5
Conclusion	5

Table of Authorities Cited

Cases:

Glus v. *Brooklyn E.D.Ry Term.*, US 231 (1959)	5
Love v. *U.S.*, 122 CtClms 144, 146 (1952)	3
Levin v. *U.S.*, 133 CtClms 774 (1956)	3
O'Brien v. *Wheelock*, 184 US 450	3
Phillips J. Alexander v. *Phillips Petroleum Co.*, 130 F.2nd 503, 10thCI (1942)	4
In re Murcheson, 349 US 133	5

Judicial Code:

U.S. 2501	1, 2, 3, 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No.

RICHARD HARRIS,

Petitioner,

v.

UNITED STATES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Richard Harris, of Gwynedd Valley, Penna., the petitioner in the Court below, prays that a writ of certiorari issue to review the decision of the UNITED STATES COURT OF CLAIMS entered June 17th, 1960.

Opinion Below

The decision of the COURT OF CLAIMS granted a motion of counsel for defendant for dismissal by said court based on the provisions of USCode 2501 making mandatory the dismissal of "EVERY" cause of Action that is not instituted within six years after the same first accrued. USCode 2501 recited no exception to this ruling. The order of dismissal of petitioner's claim was entered June 18th. 1960.

Questions Presented

In its order of dismissal, the COURT OF CLAIMS specified no definite date at which the Court deemed the provisions of USCode 2501 became effective, and petitioner concludes said date should be Nov. 6th. 1959 when the Accounting office denied petitioner's claim.

The instant case relates solely to the failure of defendant to reclassify petitioner, as promised, together with the salary differential attendant thereto, commensurate with the more important duties assigned to him.

Petitioner worked as a civilian employee of the defendant from November 21st. 1942 to September 10th. 1946 as a purchase analyst at the Central District Headquarters, Army Air Force, Detroit, Mich. during which period of time he caused to be returned to the defendant many millions of dollars in excess charges exacted by corporations on war contracts. When petitioner desired to return to his home and family in Pennsylvania, he was urged by his superiors to remain because his unit had recovered more money for the government at less cost than any other unit. His superiors, as an inducement, assured him that they would reclassify his status with the added compensation which he had earned and to which he was entitled. These assurances never materialized; hence the suit.

The inducements and promises made to plaintiff and continuing over a period of years and ending in a final decision of the General Accounting Office filed Nov. 6th. 1959, are all set forth at length in plaintiff's statement of claim and these allegations are neither denied or controverted by the defendant and therefore must be admitted to be true, thereby creating an equitable estoppel barring defendant's plea under USCode 2501 as a defense. Likewise, the two cases cited by the defendant in support of its Motion to

Dismiss are not germaine to the issues raised in that these two cases, to-wit: *Love* v. *U.S.* 122 Ct Clms 144, 146 (1952) and *Levin* v. *U.S.* 133 Ct Clms 774 (1954), the crux of each of these respective claims arises out of a discharge from employment. In one case the Court determined the discharge legal, and in the second case the Court decreed the plaintiff had no right to enter suit. Both claims had been opposed on the plea of the Statute of Limitations, yet the Court entered its respective decree.

The foregoing cases cited by defendant, however, are far afield of plaintiff's action who was not discharged.

As further argument, the petitioner respectfully submits that defendant's Motion to Dismiss based on USCode 2501 is improvidently filed in that said Motion fails to fall within the exceptions enumerated in Ct Clms Rule 16B.

The petitioner further contends that petitioner's action essentially is an equitable action and defendant attempts to apply the equitable rule of laches to the Statute of Limitations.

In *O'Brien* v. *Wheelock*, 184 US 450, the Court said:

> "Laches consists of two elements, inexcusable delay in commencing suit and prejudice resulting to the defendant from such delay. Its existence depends upon the equities of the case, and not upon the lapse of time."

In this instant case the petitioner contends that had his claim been repudiated by the defendant and the petitioner then failed to act, laches could and would apply. On the contrary, petitioner's claim was never repudiated by the defendant, nor does the record disclose any disputation of petitioner's allegations of the inducements and promises made to him which kept this case alive until denied by The General Accounting Office on November 6th, 1959 on a charge of neglect not justly attributable to the petitioner.

"Laches will not be imposed on one who has been justifiably ignorant "of the facts creating his right of cause of action, and who therefore had failed to assert it".

Phillips J. Alexander v. *Phillips Petroleum Co.* 130 F.2nd. 503, 10th CI (1942).

Statement of the Case

After continuous attempts to obtain the compensation due and promised he was, in 1949, shunted to Congress on the advice that such compensatory reimbursement required special legislation, and, pursuant to this advice, he made such application, and likewise was held in suspense for a period of years until 1956 at which time he was advised that such a bill, even if introduced, would be subject to jostling about Congress and never would be acted upon. Therefore, on February 22nd. 1956 the petitioner filed a complaint with the President to which he received no reply, but on November 6th. 1959 (presumably in answer to same) he did receive a notice to the effect that his claim was denied by the General Accounting Office on the conclusion that it was filed ten years after the date the debt first accrued. Within two months after the receipt of this notice, the petitioner, on Jan. 11th. 1960, entered suit in the COURT OF CLAIMS to obtain a judicial review of the ruling and the Court's consideration of the claim.

The petitioner did not sleep on his rights but had used all due diligence to obtain the compensation justly due him and promised to him and to which he received no decisive answer until November 6th. 1959 denying his claim on a technical reason. The petitioner contends that he should not be penalized for conditions not within his control. Petitioner concedes the great merits of the Statute of Limitations, but argues that it is a Statute of repose rather than a penalty and that the intendment of Congress in the enactment of USCode 2501 was not to circumvent petitioner's

constitutional right of his day in Court, but to set a time when security from suit could be assured a defendant. This Statute of repose is not operative in matters where a plaintiff is not cognizant of his rights and has been led by fraud or other devious means to defer his action. In support of this conclusion, the petitioner cites the decree of Your Honorable Court entered in *Glus* v. *Brooklyn Eastern District Ry. Terminal* US 231 (1959) wherein the Court determines that this Code is inapplicable where the litigant is detered by promises of compensation, or settlement of his claim.

Reasons for Granting the Writ

1. The indisputable righteousness of the claim.
2. Justice requires it.
3. The record, as stated in plaintiff's detailed claim.

Conclusion

By reason of the summary dismissal of plaintiff's claim by the Court of Claims, the plaintiff is denied his right to justice and remedies for injuries sustained and deprived of his day in Court.

Wherefore, with full faith and credit in the decree of Your Honorable Court that "Justice must satisfy the appearance of Justice" (*In re Murcheson*, 349 U.S. 133) plaintiff prays Your Honorable Court for the allowance of a Writ of Certiorari to issue in the above entitled case directed to the Court of Claims.

Respectfully submitted,

RICHARD HARRIS,
Pro se
Cathcart Road,
Gwynedd Valley, Penna.

(1542-0)

COPY

No. 322

In the Supreme Court of the United States

OCTOBER TERM, 1960

RICHARD HARRIS, PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

GEORGE COCHRAN DOUB,
Assistant Attorney General,

JOHN G. LAUGHLIN, JR.,
DONALD H. GREEN,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	2
Argument	3
Conclusion	4

CITATIONS

Cases:

Ball v. *United States*, 137 F. Supp. 740, certiorari denied, 352 U.S. 827	3-4
Dorer v. *United States*, 115 C. Cls. 83	4
Group v. *United States*, 125 C. Cls. 135	4
Levine v. *United States*, 133 C. Cls. 774	4
Love v. *United States*, 122 C. Cls. 114	4
Soriano v. *United States*, 352 U.S. 270	4

Statutes:

28 U.S.C. 2501	1, 2, 3, 4
31 U.S.C. 71a	3
31 U.S.C. 237	3

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 322

RICHARD HARRIS, PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The Court of Claims did not write an opinion.

JURISDICTION

The order of the Court of Claims was entered on June 17, 1960. The petition for a writ of certiorari was filed on August 15, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the Court of Claims correctly ruled that petitioner's action was barred by the six-year statute of limitations, 28 U.S.C. 2501.

STATUTE INVOLVED

28 U.S.C. 2501. *Time for filing suit.*

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

* * * *

STATEMENT

Petitioner worked as a civilian employee of the Government from November 21, 1942, to September 10, 1946, serving as a purchase analyst at Central District Headquarters, Army Air Forces, Department of Army, Detroit, Michigan. Petitioner started work at the grade of C.A.F. 7 and was eventually promoted to C.A.F. 11. He contends that he received oral assurance that, since his services were worth more compensation than he received, his position would be reclassified to a higher grade. He contends further that he was recommended for a promotion but, because of alleged animosity toward him by superiors, the promotion was never obtained. In 1946, he voluntarily left Government employment.

In 1949, petitioner began a series of attempts to obtain the added compensation to which he felt entitled. He corresponded with various members of Congress and he wrote to the President. On October 28, 1959, he filed a claim for $4,800 with the General Accounting Office, which was denied on November 6, 1959, because it was filed more than 10 years after

the claim had accrued.[1] A petition was filed in the Court of Claims on January 11, 1960, claiming $4800.00 as additional compensation for Government service which ended on September 10, 1946. The United States moved to dismiss the claim as barred by the statute of limitations, 28 U.S.C. 2501, and its motion was granted on June 17, 1960.

ARGUMENT

A cause of action in the Court of Claims accrues, for purposes of the statute of limitations, at the time when a suit may first legally be instituted, that is, when all events have occurred which fix the liability of the United States to the claimant and which entitle the claimant to sue thereon. *Ball* v. *United States*,

---

[1] 31 U.S.C. 71a and 237 provide:

(1) Every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within ten full years after the date such claim first accrued: *Provided*, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established.

(2) Whenever any claim barred by subsection (1) of this section shall be received in the General Accounting Office, it shall be returned to the claimant, with a copy of this section, and such action shall be a complete response without further communication.

137 F. Supp. 740 (C. Cls.), certiorari denied, 352 U.S. 827; *Group* v. *United States*, 125 C. Cls. 135; *Dorer* v. *United States*, 115 C. Cls. 83. Petitioner's claim, if any, accrued not later than September 10, 1946, when his employment with the Government was voluntarily terminated. The claim thus accrued more than 13 years prior to the filing of his petition with the Court of Claims and is barred by the applicable six-year statute of limitations. 28 U.S.C. 2501.[2] The judgment of the court below dismissing petitioner's case is clearly correct. Review by this Court is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

GEORGE COCHRAN DOUB,
Assistant Attorney General.

JOHN G. LAUGHLIN, JR.,
DONALD H. GREEN,
Attorneys.

SEPTEMBER 1960

---

[2] The statute of limitations is jurisdictional and was not tolled by petitioner's attempt to obtain administrative or congressional relief. *Soriano* v. *United States*, 352 U.S. 270, 274-275; *Love* v. *United States*, 122 C. Cls. 144, 146; *Levine* v. *United States*, 133 C. Cls. 774.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1960 562587 231

FILE COPY

SUPREME COURT, U.S.
FILED
SEP 21 1960
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 322

RICHARD HARRIS,

Petitioner,

v.

UNITED STATES,

Respondent.

IN RE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF

Richard Harris,
Pro se,
Calhoun Road,
Greenbelt Valley, Pa.

INDEX

	Page
Opinion Below	1
Argument	2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 322

RICHARD HARRIS,

Petitioner,

v.

UNITED STATES,

Respondent

IN RE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF

Opinion Below

It is necessary to file this reply brief to clarify certain issues.

1. Defendant's attorneys state that no opinion was filed, whereas in fact the opinion is merged in the order of dismissal; and stated that such dismissal was by reason of lack of jurisdiction because of the provisions of U. S. Code 2501; but said opinion so merged failed to recognize the fact that all delays were caused by the inducements and

promises made by plaintiff's superiors whose directions he followed as of course; likewise the opinion so merged failed to state a definite date at which the Court deemed the statute tolled.

Argument

2. None of the allegations have been denied or controverted by the defendant; therefor all allegations of the plaintiff must be accepted as true. Plaintiff was and is prepared to support them by convincing proof thereof.

Plaintiff is entitled to his day in court which has been denied him.

In the cause of justice, plaintiff is entitled to be heard and respectfully submits that a writ of Certiorari should issue.

Respectfully submitted,

RICHARD HARRIS,
Pro se,
Cathcart Road,
Gwynedd Valley, Pa.